

# UCLA Faculty Association

News and opinion from Dan Mitchell since 2009

HomeAbout

Wednesday, October 2, 2024

## Players as Employees - Part 5

We have been tracking legal issues surrounding the issue of whether student-athletes in some circumstances are "employees," and all that entails. Dartmouth's basketball team has been a recent forum.\* Although Dartmouth is a private entity and thus subject to NLRB regulation - unlike UC - the California PERB will often follow NLRB interpretation. But a recent Supreme Court case may now undermine the NLRB's position that the Dartmouth players are employees.



From Sportico:

*In a sign that a recent U.S. Supreme Court ruling on a case that has nothing to do with sports could greatly impact the future of college athletics, Dartmouth College on Tuesday answered a complaint for an unfair labor practice charge by insisting its men's basketball players are relying on "an impermissible attempt to create new law that is not entitled to deference and will not withstand judicial scrutiny."*





*In a 10-page brief filed by attorneys at Morgan, Lewis & Bockius and Morgan, Brown & Joy, Dartmouth notably cited the Supreme Court's June ruling in Loper Bright Enterprises v. Raimondo. That case concerned regulatory fees imposed by a federal agency for the collection of conservation data by herring fishing companies. The Court held that courts may not defer to an agency interpretation merely because the statute is ambiguous.*

*Loper Bright overruled the Supreme Court's 1984 ruling in Chevron U.S.A. Inc. v. Natural Resources Defense Council, which held that courts were obligated to defer to agency interpretation when a statute was ambiguous and when the accompanying agency interpretation was reasonable or permissible. Loper Bright effectively means agencies are owed less deference from federal judges in interpreting statutes. Dartmouth appears to be banking on that point as it mounts a legal challenge over a statutory definition of employment...*

Full story at <https://www.sportico.com/law/analysis/2024/dartmouth-college-nlrb-answer-complaint-1234798663/>.

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\*<https://uclafacultyassociation.blogspot.com/2024/08/players-as-employees-part-4.html>.

Posted by California Policy Issues at 6:00 AM No comments:      

Labels: [athletics](#), [Dartmouth](#), [UC](#)

Tuesday, October 1, 2024

## Hassle

A notice was circulated via email yesterday by UCLA Campus HR that appears to be a potential hassle for some folks (and raises concerns about an outside firm handling UC personnel data). Moreover, the notice was given yesterday to take effect today:



Sent: Monday, September 30, 2024 9:31 AM

Subject: **Family Member Eligibility Verification – Multi-Factor Authentication to be Enabled on UnifyHR Portal as of 10-01-2024**

Dear Colleagues:

Please distribute this notice to Staff and Faculty in your organization.

Re: Family Member Eligibility Verification – Multi-Factor Authentication to be Enabled on UnifyHR Portal as of 10-01-2024

### The Council of UC Faculty Associations

- [Faculty File Historic Academic Freedom Unfair Labor Practice Charges Against UC](#)
- [Union Letter to UC with Benefits Demands](#)
- [We Oppose Deprofessionalizing Librarians](#)
- [We Oppose AB-1418's Inadequate Protection from the Harms of Facial Recognition Tech](#)
- [We Oppose SB-1287's Restrictions on Protected Speech](#)

### Remaking the University

- [Liner Note 9. BONFIRE OF THE KNOWLEDGES \(PART 4\): Interpretation as Counterpower - 12/31/2024](#)
- [MLA and BDS 3: Letter from Current and Former Members of the MLA Committee on Academic Freedom and Professional Rights and Responsibilities to MLA Executive Director and Executive Council on Blocking the Debate - 12/30/2024](#)
- [MLA and BDS 2: Letter from former members of the MLA Executive Council to Current Executive Council on Blocking the Debate - 12/29/2024](#)

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### Topics

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On Tuesday, October 1, 2024, UnifyHR will enable Multi-Factor Authentication (MFA) for employees and retirees logging into their portal to complete Family Member Eligibility Verification (FMEV). MFA adds an extra layer of security by verifying a user's identity before access is granted. Below are the steps that will be required for new and existing users:







New Users: After setting up their account, new users will be asked to authenticate. A code will be sent to their email address, and they will need to enter their username, password, and 8-digit code to log into the portal.

Existing Users: Upon logging in, existing users will be asked to authenticate. A code will be sent to their email address on file, and they will need to enter their username, password, and 8-digit code to log into the portal.

Employees and retirees who experience issues logging in may contact UnifyHR for assistance at 1-844-718-3970.

Posted by California Policy Issues at 7:32 AM

No comments:



Labels: health care, UCLA

Adverse Internet Archive Appellate Decision - Part 2

We previously posted about the Internet Archive and its loss of litigation with a publishers group. Again we note that this blog uses the Internet Archive to preserve recordings of Regents meetings and other purposes such as preserving a "print" version of this blog itself.\*



Imagine a great power outage (or maybe World War III) that blows out the internet and most of the history of the 21st century to date. Or maybe just imagine a lawsuit that has the same effect.

From Wired, Kate Knibbs:

*If you step into the headquarters of the Internet Archive on a Friday after lunch, when it offers public tours, chances are you'll be greeted by its founder and merriest cheerleader, Brewster Kahle.*

*You cannot miss the building; it looks like it was designed for some sort of Grecian-themed Las Vegas attraction and plopped down at random in San Francisco's foggy, mellow Richmond district. Once you pass the entrance's white Corinthian columns, Kahle will show you the vintage Prince of Persia arcade game and a gramophone that can play century-old phonograph cylinders on display in the foyer. He'll lead you into the great room, filled with rows of wooden pews sloping toward a pulpit. Baroque ceiling moldings frame a grand stained glass dome. Before it was the Archive's headquarters, the building housed a Christian Science church.*

*I made this pilgrimage on a breezy afternoon last May. Along with around a dozen other visitors, I followed Kahle, 63, clad in a rumpled orange button-down and round wire-rimmed glasses, as he showed us his life's work. When the afternoon light hits the great hall's dome, it gives everyone a halo. Especially Kahle, whose silver curls catch the sun and who preaches his gospel with an amiable evangelism, speaking with his hands and laughing easily. "I think people are feeling run over by technology these days," Kahle says. "We need to rehumanize it."*

*In the great room, where the tour ends, hundreds of colorful, handmade clay statues line the walls. They represent the Internet Archive's employees, Kahle's quirky way of immortalizing his circle. They are beautiful and weird, but they're not the grand finale. Against the back wall, where one might find confessionals in a different kind of church, there's a tower of humming black servers. **These servers hold around 10 percent of the Internet Archive's vast digital holdings, which includes 835 billion web pages, 44 million books and texts, and 15 million audio recordings, among other artifacts. Tiny lights on each server blink on and off each time someone opens an old webpage or checks out a book or otherwise uses the Archive's services.** The constant, arrhythmic flickers make for a hypnotic light show. Nobody looks more delighted about this display than Kahle.*

*It is no exaggeration to say that digital archiving as we know it would not exist without the Internet Archive—and that, as the world's knowledge repositories increasingly go online, archiving as we know it would not be as functional. **Its most famous project, the Wayback Machine, is a repository of web pages that functions as an unparalleled record of the internet. Zoomed out, the Internet Archive is one of the most important historical-preservation organizations in the world. The Wayback Machine has assumed a default position as a safety valve against digital oblivion.** The rhapsodic regard the Internet Archive inspires is earned—without it, the world would lose its best public resource on internet history.*

*Its employees are some of its most devoted congregants. "It is the best of the old internet, and it's the best of old San Francisco, and neither one of those things really exist in large measures anymore," says the Internet Archive's director of library services, Chris Freeland, another longtime staffer, who loves cycling and favors black nail polish. "It's a window into the late-'90s web ethos and late-'90s San Francisco culture—the crunchy side, before it got all tech bro. It's utopian, it's idealistic."*

*But the Internet Archive also has its foes. Since 2020, it's been mired in legal battles. In Hachette v. Internet Archive, book publishers complained that the nonprofit infringed on copyright by loaning out digitized versions of physical books. In UMG Recordings v. Internet Archive, music labels have alleged that the Internet Archive infringed on copyright by digitizing recordings.*

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Contributors

-  California Policy Issues
-  Toby Higbie
-  UCLA Faculty Association

*In both cases, the Internet Archive has mounted “fair use” defenses, arguing that it is permitted to use copyrighted materials as a noncommercial entity creating archival materials. In both cases, the plaintiffs characterized it as a hub for piracy. In 2023, it lost Hachette. This month, it lost an appeal in the case. The Archive could appeal once more, to the Supreme Court of the United States, but has no immediate plans to do so. (“We have not decided,” Kahle told me the day after the decision.)*

*A judge rebuffed an attempt to dismiss the music labels’ case earlier this year. Kahle says he’s thinking about settling, if that’s even an option.*

***The combined weight of these legal cases threatens to crush the Internet Archive. The UMG case could prove existential, with potential fines running into the hundreds of millions. The internet has entrusted its collective memory to this one idiosyncratic institution. It now faces the prospect of losing it all.***

*Kahle has been obsessed with creating a digital library since he was young, a calling that spurred him to study artificial intelligence at MIT. “I wanted to build the library of everything, and we needed computers that were big enough to be able to deal with it,” he says.*

*...After the initial ruling in Hachette v. Internet Archive, the parties agreed upon settlement terms; although those terms are confidential, Kahle has confirmed that the Internet Archive can financially survive it thanks to the help of donors. If the Internet Archive decides not to file a second appeal, it will have to fulfill those settlement terms. A blow, but not a death knell.*



*The other lawsuit may be far harder to survive. In 2023, several major record labels, including Universal Music Group, Sony, and Capitol, sued the Internet Archive over its Great 78 Project, a digital archive of a niche collection of recordings of albums in the obsolete record format known as 78s, which was used from the 1890s to the late 1950s. The complaint alleges that the project “undermines the value of music.” It lists 2,749 recordings as infringed, which means damages could potentially be over \$400 million...*

*As he sits on a rock with his phone in his hand, Kahle says the US legal system is broken. He says he doesn’t think this is the end of the lawsuits. “I think the copyright cartel is on a roll,” he says. He frets that copycat cases could be on the way. He’s the most bummed-out guy I’ve ever seen on vacation in the south of France. But he’s also defiant. There’s no inkling of regret, only a renewed sense that what he’s doing is righteous. “We have such an opportunity here. It’s the dream of the internet,” he says. “It’s ours to lose.” It sounds less like a statement and more like a prayer.*

Full story at <https://www.wired.com/story/internet-archive-memory-wayback-machine-lawsuits/>.

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\*<https://uclafacultyassociation.blogspot.com/2024/09/adverse-internet-archive-appellate.html>.



Posted by California Policy Issues at [6:30 AM](#) No comments:       

Labels: [miscellaneous](#)

Westwood Back Then



Westwood Village in 1940

Posted by California Policy Issues at [6:00 AM](#) No comments:       

Labels: [miscellaneous](#), [UCLA](#)

Monday, September 30, 2024

Some UC Retirement Programs for October

### Preparing for Retirement

Description: The Preparing for Retirement webinar provides a broad overview of UC's retirement benefits and lays the foundation for the Retiree Health Benefits and UC Retirement Process presentations.



Preparing for Retirement registration:

[https://ucop.zoom.us/webinar/register/WN\\_m9bWSZ3IRdWLsvJ0Je6\\_iw#/registration](https://ucop.zoom.us/webinar/register/WN_m9bWSZ3IRdWLsvJ0Je6_iw#/registration)

#### Date & Time

Tues., Oct. 1, 10 AM

Wed., Oct. 9, 5:30 PM

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### Retiree Health Benefits

Learn about the health plans available for UC retirees and their eligible family members.

Register for a live webinar: [https://ucop.zoom.us/webinar/register/WN\\_KpETRz4EQVS-DokDp9OA\\_w#/registration](https://ucop.zoom.us/webinar/register/WN_KpETRz4EQVS-DokDp9OA_w#/registration)

Thurs., Oct. 24, 10 AM–noon

Posted by California Policy Issues at 2:32 PM

No comments:



Labels: [health care](#), [uc retirement](#)

## Watch the Regents meetings of Sept. 19, 2024

We are catching up with the Regents meeting of Sept. 19th. We have noted a few bits from that meeting in earlier posts. But here is our general summary.



Public comments discussed use of military-style equipment by UC police, Blackstone investment, nurse labor relations, Apollo Fund investment, greenhouse gas emissions, nonunion staff pay, antisemitism, complaints about excessive security, pro-Palestine divestment, AFSCME issues, problems with UC core insurance, sexual harassment, and antiunion meetings. The Board then turned to statements from student leaders which included complaints about the new time-place-manner rules, limits on department political statements, and police on campus. Other issues raised included food access for undocumented students and maintenance problems in student housing.

In the Governance committee, a new VP for the national labs was introduced. Various executive pay increases were approved. Regent Pérez asked to separate those executives who were direct reports to the Regents for approval from the other executives. He said he was uncomfortable with the current pay-setting methodology which granted raises to recent hires. Regent Cohen agreed. It was noted that there was no similar methodology for lower-paid employees. Chair Reilly said a process would be set up to look at the methodology for executives.

At Compliance and Audit, there was discussion of approval of certain military-style equipment. It was noted that UC does not receive equipment from the US military. A disruption occurred when questions began and the room was cleared by police. The witnesses who were to be questioned did not re-appear when the meeting resumed and the requests were approved.

All committee reports were approved by the Board.

At the Investments Committee, the CIO reviewed investment returns for the year ending June 30, 2024. It was a period of strong stock market returns so returns were relatively high. Regent Cohen asked why there are no benchmarks for real assets and was told they are a relatively small percent of the portfolio and a diverse mix so there is no handy benchmark.

The Athletics Committee heard reports about athletics at Merced (water polo and basketball).

The full Board convened for a session about staff employment featuring numbers, demographics related to diversity, and other information. A survey indicated staff had concerns about pay, opportunity for promotion, remote work, and workplace culture. There was separate discussion about the 200+ senior management group employees. Then there was then a presentation about students who participated in the Paris Olympics and Para-Olympics.

As always, we preserve meetings of the Regents indefinitely, since the Regents have no policy on duration of retention.

Below are the various links to the September 19th sessions:

The initial meeting of the full Board is at:

<https://ia800102.us.archive.org/27/items/9-18-2024-board-academic-and-student-affairs-committee/9-19-2024%20Board-1.mp4>.

The second meeting of the full board is at:







<https://ia800102.us.archive.org/27/items/9-18-2024-board-academic-and-student-affairs-committee/9-19-2024%20Board-2.mp4>.

Compliance and Audit, Governance, Board, Investments, and Athletics:

<https://ia600102.us.archive.org/27/items/9-18-2024-board-academic-and-student-affairs-committee/9-19-2024%20Compliance%20and%20Audit%20Committee%2C%20Governance%2C%20Board%2C%20Investments%2C%20Special%20Committee%20on%20Athletics.mp4>.

The webpage for both Sept. 18th and 19th is at:

<https://archive.org/details/9-18-2024-board-academic-and-student-affairs-committee>.

Posted by California Policy Issues at [6:30 AM](#) No comments:      

Labels: [athletics](#), [UC Regents](#)

## Community College DEI Case Dismissed

We noted that community college requirements for DEI statements had been suspended as the result of a lawsuit by a Bakersfield college faculty member.\* That case has now been dismissed. From [Inside Higher Ed](#):

*...The [DEI] rules, which were proposed by the chancellor's office and went into effect last fall, set "a DEIA competency and criteria framework that can serve as a minimum standard for evaluating all California Community College employees," according to a May 2023 memorandum from system leaders offering guidance on the rule.*

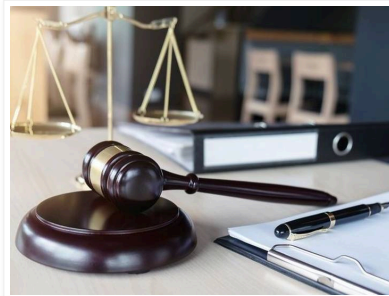
*The court decision, issued [last] Monday, rejects an earlier recommendation by a magistrate judge to suspend the rules.*







*"Ultimately, [plaintiff] Johnson has not adequately alleged that he faces an injury that is 'actual or imminent,' and he has therefore failed to invoke this court's federal jurisdiction," the court order reads. "As Johnson has failed to establish standing, his complaint must be dismissed without prejudice." ...*

Full story at <https://www.insidehighered.com/news/quick-takes/2024/09/25/lawsuit-over-calif-community-colleges-dei-rules-dismissed>.

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\*<https://uclafacultyassociation.blogspot.com/2023/11/community-college-dei-requirements.html>.



Posted by California Policy Issues at [6:00 AM](#) No comments:      

Labels: [academic freedom](#), [community colleges](#), [diversity](#)

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